Supreme Court, U.S.
FILED
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No. 00-203

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

CLEVELAND INDIANS BASEBALL COMPANY,
A LIMITED PARTNERSHIP

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: AUGUST 8, 2000
CERTIORARI GRANTED: OCTOBER 16, 2000

HHP

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO (CLEVELAND)

Civil Docket for Case No. 96-CV-2240

CLEVELAND INDIANS BASEBALL COMPANY,
A LIMITED PARTNERSHIP ORGANIZED IN THE
STATE OF OHIO, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
10/15/96	–	FILING FEE: on 10/15/96 in the amount of $120.00, receipt #241029. (baw) [Entry date 10/16/96]
10/15/96	–	ASSIGNMENT OF MAGISTRATE JUDGE pursuant to Local Rule 1:2.4, Assignment of Cases. In the event of referral this case will be referred to Mag. Judge Jack B. Streepy. 1 pg (dh) [Entry date 10/21/96]

DATE	DOCKET NUMBER	PROCEEDINGS
10/15/96	1	COMPLAINT (Service: summons issd, magistrate consent form issd) (exh & 12 pgs) (dh) [Entry date 10/21/96]
10/15/96	2	CIS filed by pltf. Recommended Track: Standard. (2 pgs) (dh) [Entry date 10/21/96]
10/16/96	3	PRAECIPE by pltf for issuance of alias summons. (issued on 10/16/96) (1 pg) (dh) [Entry date 10/21/96]
10/18/96	4	MOTION by pltfs for attys Robert A. Dupuy, Timothy C. Frautschi & Mary Kay Braza to appear pro hac vice (4 pgs) (dh) [Entry date 10/22/96]
10/30/96	–	MARGINAL ENTRY ORDER granting motion by pltfs for attys Robert A Dupuy, Timothy C. Frautschi & Mary Kay Braza to appear pro hac vice [4-1] (issued on 10/30/96) Judge Kathleen M. O'Malley (dh) [Entry date 10/31/96]

DATE	DOCKET NUMBER	PROCEEDINGS
11/25/96	5	ATTORNEY APPEARANCE on behalf of deft by attys Stephen A. Sherman, & Annette G. Butler (2pgs) (dh) [Entry date 11/26/96]
12/18/96	6	MOTION by deft for ext of time until 1/17/97 to answer pltf's complt w/memo in supp. (3 pgs) (dh) [Entry date 12/19/96]
1/10/97	–	MARGINAL ENTRY ORDER granting motion by deft for ext of time until 1/17/97 to answer pltf's complt [6-1] (issued on 1/13/97) Judge Kathleen M. O'Malley (dh) [Entry date 01/13/97]
1/21/97	7	ANSWER to Complaint by USA (6pgs) (dh) [Entry date 01/23/97]

DATE	DOCKET NUMBER	PROCEEDINGS
2/12/97	8	CASE MANAGEMENT CONFERENCE scheduling order. CMC set at 12:30 p.m. on 3/6/97 in room 135 before Judge O'Malley (issued on 2/12/97) (3 pgs) Judge Kathleen M. O'Malley (dh) [Entry date 02/14/97]
2/25/97	9	MAIL Returned addressed to plaintiff Cleve Indians Co re: CMC scheduling order (rs) [Entry date 02/26/97]
3/4/97	10	STATEMENT by deft USA re the CMC (4 pgs) (dh) [Entry date 03/05/97]
3/6/97	11	CASE MANAGEMENT PLAN/ ORDER: Track Designation: standard, CMC held on 3/6/97; non-expert discovery to be complete by 12/6/97; expert discovery to be complete by 12/24/97; expert rpts shall be exchanged by 9/1/97 for initial & 11/1/97 for rebuttal; disp mtn filing ddl is 2/1/98; status hrg set at 12:30 p.m. on

DATE	DOCKET NUMBER	PROCEEDINGS
		7/31/97 (issued on 3/6/97) (4 pgs) Judge Kathleen M. O'Malley (dh) [Entry date 03/07/97]
7/31/97	12	STATUS Report by deft (3 pgs) (js) [Entry date 08/01/97]
7/31/97	13	MINUTES of proceedings: before Judge Kathleen M. O'Malley; Court reporter none; status hrg held 7/31/97; Parties to contact the court by 8/8/97 to apprise the court regarding the status of settlement discussions. No exts of the dates in the Case Management Plan are contemplated (issd on 7/31/97) (2 pgs) (pl) [Entry date 08/01/97] [Edit date 03/23/99]
8/4/97	14	STATUS Report by pltf Cleve Indians Co (3 pgs) (dh) [Entry date 08/05/97]
10/9/97	15	NOTICE by deft of filing facts deemed admitted as set for in its request for admissions. (21 pgs) (dh)

DATE	DOCKET NUMBER	PROCEEDINGS
10/31/97	16	ORDER directing pltf to provide responses to deft's 1st set of interr & request for prodctn of docmts by 11/7/97; failure to comply will result in dismissal for failure to prosecute; deft has requested an ext of discovery ddls; however, the Ct feels there is no reason to extend ddls at this time. (issued on 10/31/97) (2 pgs) Judge Kathleen M. O'Malley (dh) [Entry date 11/03/97]
11/10/97	17	MOTION by pltf for protective order (9 pgs) (dh) [Entry date 11/12/97]
11/20/97	18	MOTION by USA for ext of time to conduct discovery & file disp motions w/memo of law. (6 pgs) (dh)
11/20/97	19	MOTION by USA to compel prodctn of docmts or alternatively, to dismiss pltf's complt w/memo of law in support. (60 pgs) (dh)

DATE	DOCKET NUMBER	PROCEEDINGS
11/24/97	20	NOTICE by USA of taking depositions of Cleveland Indians Baseball Company on 12/2/97 & of Major League Baseball Players Association on 12/4/97. (13 pgs) (dh)
11/25/97	21	NOTICE OF SERVICE by USA of docmt subpoena upon the law firm of Morgan Lewis & Bockius. (7 pgs) (dh)
12/5/97	22	RESPONSE by pltf to deft US' mot to compel prodctn of docmts [19-1] (66 pgs) (bb)
12/5/97	–	MARGINAL ENTRY ORDER granting in part motion by USA for ext of time to conduct discovery & file disp motions [18-1]; deft's non-expert discovery to be complete 1/20/98; all other ddls remain intact. (issued on 12/5/97) Judge Kathleen M. O'Malley (dh) [Entry date 12/08/97]
12/5/97	23	PROTECTIVE ORDER re disclosure of "confidential information". (issued on 12/5/97)

DATE	DOCKET NUMBER	PROCEEDINGS
		(5 pgs) Judge Kathleen M. O'Malley (dh) [Entry date 12/08/97]
12/15/97	24	REPLY Memo by deft USA to Cleveland Indians' response to motion to compel prodctn of docmts or alternatively, to dismiss pltf's complt [19-1], [19-2] (79 pgs) (dh)
1/28/98	25	MEMORANDUM AND ORDER granting in part & denying in part USA's motion to compel prodctn of docmts; pltf must produce docmts requested in deft's docmt requests #3, 4, & 5; failure to do so w/in 14 days will result in dismissal of this case purs to FRCP 37(b)(2)(C); pltf will be allowed no ext; [19-1] & denying motion to dismiss pltf's complt [19-2] (issued on 1/28/98) (19 pgs) Judge M. O'Malley (dh) [Entry date 01/29/98]
1/30/98	26	MOTION by pltf for SJ. (44 pgs) (kv)

DATE	DOCKET NUMBER	PROCEEDINGS
1/30/98	27	APPENDIX by pltf to afdvt of Rober A. Dupu (attached to mot) in supp of mot for SJ [26-1]. (one volume) (kv)
2/2/98	28	MOTION (Request) by USA to enlarg time to file disp motions by 30 days. (4 pgs) (dh)
2/2/98	29	ATTORNEY SUBSTITUTION: terminating atty Stephen A. Sherman for USA and substituting atty Glenn J. Melcher. (2 pgs) (dh)
2/5/98	–	MARGINAL ENTRY ORDER granting motion by USA to enlarg time to file disp motions by 30 days. [28-1] Disp mtn filing ddl ext until 4/20/98 (issued on 2/6/98) Judge Kathleen M. O'Malley (dh) [Entry date 02/06/98]
2/19/98	30	JOINT MOTION by ptys to reopen limited discovery, & to enlarg time to respond to pltf's motion for SJ. (3 pgs) (dh)

DATE	DOCKET NUMBER	PROCEEDINGS
2/25/98	–	MARGINAL ENTRY ORDER granting motion by ptys to reopen limited discovery & to enlarg time to respond [30-1], [30-2]; only deft may engage in additional discovery - pltf is barred from further affirmative discovery efforts. No extensions of time of any sort will be granted to pltf. (issued on 2/25/98) Judge Kathleen M. O'Malley (dh) [Entry date 02/26/98]
3/10/98	31	MOTION by deft to dismiss case or at least for other sanctions w/memo of law. (28 pgs) (dh)
4/30/98	32	STIPULATION and ORDER: that USA withdraws its motion for dismissal/sanctions [31-1]/[31-2], denying as moot pltf's motions for SJ. [26-1] and for protective order [17-1]; ct II of the complt is dismissed w/prejudice, jgm on ct I is ordered pltf, entry to abide the final disposition of

DATE	DOCKET NUMBER	PROCEEDINGS
		the case; briefing schedule established for the parties' respective SJ motions on the ct III - 4/29/98, stipulated facts - 5/13/98, initial briefs - 5/27/98, response briefs. (issued on 4/30/98) (3 pgs) Judge Kathleen M. O'Malley (ej) [Entry date 05/01/98]
5/5/98	33	STIPULATED FACTS by parties (8 pgs) (rs)
5/13/98	34	MOTION by deft for SJ (58 pgs) (jam)
5/13/98	35	MOTION by pltf for judgment on stipulated facts (22 pgs) (jam)
5/27/98	36	REPLY Brief by pltf in support of its motion for judgment on stipulated facts [35-1] (9 pgs) (dh) [Entry date 05/28/98]

DATE	DOCKET NUMBER	PROCEEDINGS
1/25/99	37	MEMORANDUM & OPINION granting motion by pltf for judgment on stipulated facts [35-1], & denying motion by deft for SJ [34-1]; jgm is entered in favor of pltfs for a total of $97,202.20, plus int. Dismissing case (issd on 1/26/99) (5 pgs) Judge Kathleen M. O'Malley (dh) [Entry date 01/27/99] [Edit date 03/23/99]
1/25/99	38	ORDER entering judgment in favor of pltf the Cleve Indians Baseball Co, & against deft USA for refunds of FICA taxes in the amt of $96,250.20 plus int from 4/30/94 at the rate dictated by IRC 6621 & 6622; & $952.00 in FUTA taxes plus int from 1/31/95 at the rate fixed by IRC 6621 & 6622. (issued on 1/26/99) (1 pg) Judge Kathleen M. O'Malley (dh) [Entry date 01/27/99]

DATE	DOCKET NUMBER	PROCEEDINGS
2/8/99	39	MAIL Returned addressed to cnsl for pltf, Robert Dupuy, w/insufficient address. (jk) [Entry date 02/09/99]
3/22/99	40	NOTICE of Appeal by USA re: memo and opn [37-2], re: order dismissing case [38-1] (cc: all counsel-notice only. USCA-notice and docs mailed on 3/23/99) (2 pgs) (shh) [Entry date 03/23/99]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Docket No. 99-3410

CLEVELAND INDIANS BASEBALL COMPANY,
A LIMITED PARTNERSHIP, PLAINTIFF-APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

Appeal from: Northern District of
Ohio at Cleveland

DOCKET ENTRIES

DATE	PROCEEDINGS
3/31/99	Civil Case Docketed. Notice filed by Appellant USA. Transcript needed: n (cf)
3/31/99	BRIEFING LETTER SENT setting briefing schedule: appellant brief due 5/10/99; appellee brief due 6/9/99; appendix due 6/30/99; final appellant brief due 7/21/99. [99-3410] final appellee brief due 7/21/99;. (cf)

DATE	PROCEEDINGS
4/12/99	APPEARANCE filed by Attorney Michelle O'Connor for Appellant USA [99-3410] (cf)
4/12/99	PRE-ARGUMENT STATEMENT filed by Michelle O'Connor for Appellant USA [99-3410] (cf)
4/14/99	APPEARANCE filed by Attorney James L. Huston for Appellee Clev Indians [99-3410] (cf)
4/16/99	TRANSCRIPT ORDER FORM filed by Glenn J. Melcher for Appellant USA: Transcript not needed. [99-3410] [1927110-1] (blh)
4/19/99	APPEARANCE filed by Attorney Annette G. Butler for Appellant USA [99-3410] (cf)
5/7/99	APPEARANCE filed by Attorney Robert W. Metzler for Appellant USA [99-3410] (cf)
5/7/99	Appellant MOTION filed to extend time to file brief. Motion filed by Robert W. Metzler for Appellant USA. Certificate of service date 5/3/99 [99-3410] (cf)

DATE	PROCEEDINGS
5/7/99	LETTER SENT by cf granting motion to extend briefing [1939636-1] filed by Robert W. Metzler [99-3410] resetting briefing schedule: [99-3410] appellant brief due now 5/24/99; appellee brief now due 6/23/99; appendix now due 7/14/99; appellant final brief now due 8/4/99; appellee final brief now due 8/4/99. (cf)
5/26/99	PETITION for en banc hearing filed by Robert W. Metzler for Appellant USA. Certificate of service date 5/24/99. [99-3410] (blh)
5/26/99	PROOF BRIEF filed by Robert W. Metzler for Appellant USA. Certificate of service date 5/24/99 Number of Pages: 53. [99-3410] (vf)
5/26/99	Request to require oral argument filed by Robert W. Metzler for Appellant USA [99-3410] (vf)
5/28/99	LETTER SENT by cf to hold case in abeyance pending ruling on the petition for rehearing en banc [99-3410], cancelling the briefing schedule (cf)

DATE	PROCEEDINGS
6/11/99	ORDER filed denying petition for en banc hearing [1950454-1] filed by Robert W. Metzler [99-3410]. Entered by order of the court. (blh)
6/18/99	BRIEFING LETTER SENT resetting briefing schedule: appellee brief now due 7/19/99; appendix now due 8/9/99; appellant final brief now due 8/30/99; appellee final brief now due 8/30/99 [99-3410] . (bb)
7/1/99	Appellee MOTION filed to extend time to file brief. Motion filed by James L. Huston for Appellee Clev Indians. Certificate of service date 6/28/99 . [99-3410] (cf)
7/2/99	LETTER SENT by cf granting motion to extend briefing [1972639-1] filed by James L. Huston [99-3410] resetting briefing schedule: [99-3410] appellee brief now due 8/2/99; appendix now due 8/23/99; appellant final brief now due 9/13/99; appellee final brief now due 9/13/99. (cf)
8/5/99	PROOF BRIEF filed by James L. Huston for Appellee Clev Indians. Certificate of service date 8/2/99. Number of Pages: 21. [99-3410] (vf)

DATE	PROCEEDINGS
8/5/99	Request to waive oral argument and submit case on the briefs, (waiver on page: 1), filed by James L. Huston for Appellee Clev Indians [99-3410] (vf)
8/10/99	PROOF REPLY BRIEF filed by Robert W. Metzler for Appellant USA. Certificate of service date 8/6/99. Final reply brief due 9/13/99. [99-3410] (vf)
8/25/99	APPENDIX filed by Robert W. Metzler for Appellant. Copies: 5. Certificate of service date 8/23/99 [99-3410] (vf)
8/31/99	FINAL BRIEF filed by Robert W. Metzler for Appellant USA. Copies: 7. Certificate of service date 8/27/99 Number of Pages: 53. [99-3410] (vf)
8/31/99	FINAL REPLY BRIEF filed by Robert W. Metzler for Appellant USA. Copies: 7 Certificate of service date 8/27/99 Number of Pages: 14. [99-3410] (vf)
9/7/99	FINAL BRIEF filed by James L. Huston for Appellee Clev Indians. Copies: 7. Certificate of service date 9/2/99. Number of Pages: 21. [99-3410] (vf)

DATE	PROCEEDINGS
2/15/00	ADDITIONAL CITATION filed by Robert W. Metzler for Appellant USA. Certificate of service date 2/14/00 [99-3410] (cf)
2/24/00	CAUSE SUBMITTED on briefs to panel consisting of Judges Suhrheinrich, Cole, Quist sitting on 5/3/00. [99-3410] (me)
2/28/00	Appellee RESPONSE to appellant's additional citation filed. Response from James L. Huston for Appellee Clev Indians. Certificate of service date 2/25/00 [99-3410] (cf)
3/7/00	Record requested from district court. (dac)
3/8/00	Submission on briefs date set for May 3, 2000, Notice sent to counsel. (rld)
3/30/00	CERTIFIED RECORD filed. Volumes include 2 Pl. [99-3410] (pb)
5/10/00	Per Curiam OPINION filed: AFFIRMED [99-3410], decision not for publication pursuant to local rule 28(g) [99-3410]. Richard F. Suhrheinrich, Circuit Judge, R. G. Cole, Circuit Judge, Gordon J. Quist, District Judge. (cf)

DATE	PROCEEDINGS
5/19/00	Appellee MOTION filed to publish this court's 5/10/00 opinion [2155867-1]. Motion filed by James L. Huston for Appellee Clev Indians. Certificate of service date 5/16/00. [99-3410] (bb)
5/25/00	RULING denying motion to publish decision of 5/10/00 opinion [2155867-1] filed by James L. Huston [99-3410]. (cf)
7/7/00	MANDATE ISSUED with no cost taxed [99-3410] (dac)
7/12/00	CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [99-3410]. Volumes included: 2 Pl;. (dac)
8/9/00	Record acknowledgment received from the district court. Acknowledged by: Shawn Harrigan. Acknowledgment date: 8/4/00. [99-3410] (dac)
9/6/00	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant USA. Filed in the Supreme Court on 08-08-00 , Supreme Ct. case number: 00-203. [99-3410] (swh)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 1:96CV2240
Judge O'Malley

CLEVELAND INDIANS BASEBALL COMPANY,
A LIMITED PARTNERSHIP, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

STIPULATED FACTS

Plaintiff Cleveland Indians Baseball Company and defendant United States of America, by their undersigned attorneys, stipulate without prejudice to any position that either party may take in any other action to the following facts:

1. The relationship between Major League Baseball Players Association ("MLBPA") and the Major League Baseball Clubs (the "Clubs") is and was at all times material to the Complaint herein covered by a Collective Bargaining Agreement ("CBA"), which deals with the overall terms and conditions of players' employment that are collective in nature.

2. Article XVIII(H) of the CBA prohibits concerted action by players or Clubs in dealing with

free agents. Free Agents are those players who are not bound or reserved to a Club by contract for an upcoming baseball season.

3. Individual players sign a Uniform Player Contract ("UPC") with an individual Club, the standard form of which was negotiated between the MLBPA and the Clubs. Depending on individual players' success in bargaining for themselves, the UPC might include salaries greater than the minimum, bonuses, deferred compensation, or other special covenants or conditions of employment.

4. Under the CBA, grievances are submitted to an arbitration panel for resolution and binding arbitration. The arbitration panel can fashion whatever remedy it deems appropriate, including requiring the clubs to pay salary as damages if the terms of the CBA have been violated. Pursuant to the CBA, the MLBPA filed three separate grievances claiming that the Clubs breached the CBA before the 1986, 1987 and 1988 seasons, with the result that players suffered damages from 1986 through at least 1990. Specifically, the MLBPA contended that the Clubs acted in concert in violation of Article XVIII(H) and, because of the inter-relationship between free agency and all other aspects of the employment relationship, this concerted action was alleged to have deprived free agents and players at all seniority levels of direct and consequential benefits that would otherwise have been available to them.

5. After evidentiary hearings, the duly constituted arbitration panel in three separate decisions found that the Clubs had, in fact, interfered with the contractual rights of the players before the 1986, 1987 and 1988 seasons by acting in concert (1) to preclude or hinder

players who were free agents from leaving their previous Clubs after the 1985 and 1986 baseball seasons, and (2) to depress overall salary levels and the levels of other contract benefits and special covenants after the 1987 baseball season by sharing information as to what offers were being made to free agent players. As a result of the Clubs' found violation of the CBA, the Arbitration Panel held on August 29, 1989, that the players collectively suffered damages from loss of salary in 1986 of $10,040,000.00. On September 17, 1990, the Arbitration Panel held that the players' collectively suffered damages from loss of salary for the 1987 and 1988 baseball seasons of $37,560,000.00 and $66,340,000.00, respectively. The Arbitration Panel did not attempt to determine what any individual player's salary may have been in the absence of collusion.

6. Before the arbitration panel rendered its final decision as to salary damages for years other than 1986, 1987 and 1988, and its decision as to the applicability of other claims for damages or injury made by the MLBPA for all years, the Clubs and the MLBPA settled the three grievances on December 21, 1990. The settlement required the Clubs to pay $280 million into two custodial accounts to be administered by a custodian, for later distribution, pursuant to a distribution plan approved by the Arbitration Panel, to the players who had suffered damages. The exhibit to the Settlement Agreement provided for the allocation of the total damages for 1986 and 1987 based in part on the amount of the Arbitration Panel's awards in the August 29, 1989 decision and the September 17, 1990, decision. Under the settlement, the Clubs were not to have (and did not have) any responsibility for or input into the distribution decisions. Like the Arbitration

Panel decisions, the Settlement Agreement did not establish sums that would be paid to individual players. The Settlement Agreement also provided that the custodian would withhold from any distributions, acting solely as agent for each of the Clubs, the required amount of employment taxes to be deducted from the distributions to players from the accounts.

7. Under the CBA, a respondent Club or Clubs has the right to argue the amount of any damages for any violation of the CBA under the arbitration procedure. In these three grievances, the Clubs provided arguments and briefs as part of the decision of the Arbitration Panel as to the amount of loss of overall industry salary for the 1986, 1987 and 1988 years resulting from violation of the CBA. As part of the Settlement Agreement, the MLBPA had exclusive authority to propose the Framework and all distribution plans thereunder.

8. The Settlement Agreement provides that the Arbitration Panel would be empowered to make the final decision as to the approval of the terms of any distribution plan. The distribution plan was to be developed by the MLBPA and submitted to the Arbitration Panel for approval. First, the MLBPA drafted a Framework for distribution, proposed it to its members for comment, and the Framework was ultimately approved by the Arbitration Panel.

9. Pursuant to the Framework, the MLBPA proposed a partial distribution plan to the arbitrators on December 8, 1992 under the Settlement Agreement and Framework, providing for payments to individual players whose claims for damages related to the 1986 and 1987 seasons.

10. The arbitrator made his first awards under the Framework on February 14, 1994. As the Framework required, and as the parties had done in their overall Settlement Agreement, the awards distinguished base damages awards from interest components. As in the Settlement Agreement, interest was calculated at the U.S. government treasury bill rate, in accordance with the Settlement Agreement and Framework.

11. For purposes of liability for FICA and FUTA taxes the Cleveland Indians Baseball Company is the employer with respect to the payment of the 1986 damage awards and the 1987 damage awards for certain players. All players who received settlement payments from the Cleveland Indians were employees of the Cleveland Indians during 1986 and 1987, except for one player who was an employee of the Cleveland Indians during 1986 and is deemed to be an employee for purposes of a damage award for 1987 pursuant to the Settlement Agreement because the Cleveland Indians were the last club prior to the 1987 season which employed that player.

12. Pursuant to the Settlement Agreement and the MLBPA's proposals for distributions, the arbitrator ordered distributions with respect to the 1986 and 1987 seasons in a written award dated February 14, 1994. As a result, on or about March 1, 1994, eight players who were employees of the Cleveland Indians in 1986 received distributions with respect to the 1986 season (1986 damage awards), and fourteen players who were employees of the Cleveland Indians in 1987 and one who was deemed to be an employee in 1987 received distributions with respect to the 1987 season (1987 damage awards). None of these players performed

services for the Cleveland Indians in 1994. The awards were received in checks drawn on the custodial account, less FICA tax and income tax withholding, from the custodian of the custodial account. There was some duplication, so that a total of 18 separate players received awards allocated to the Cleveland Indians for 1986 and 1987.

13. The 1986 damage awards for Cleveland Indians players constituted wages totaling $610,000, and these players also received $219,638 in interest. The 1987 damage awards for Cleveland Indians players constituted wages totaling $1,457,848, and these players also received $409,119.17 in interest.

14. On March 23, 1993, The Clubs asked the IRS for a ruling on the payroll tax treatment of these settlement distributions. Because the IRS had not yet responded when the 1986 and 1987 awards were made in 1994, the Cleveland Indians paid the employer's share of FICA and FUTA taxes on the entire awards as if they were wages paid in 1994. The FICA tax payment was $99,381.90, and the FUTA payment was $1,008.

15. The IRS issued its private letter ruling on October 18, 1995. On February 21, 1996, the Cleveland Indians filed claims with the IRS for refunds of the FICA and FUTA taxes for the 1st Quarter, 1994 and 1994 calendar year, respectively. Sixteen of the 18 players have consented to join the refund claims. The IRS has neither allowed nor denied the claims for refund.

16. As to Count I of the complaint, the parties have now stipulated that the Cleveland Indians are entitled

to a refund of FICA payments on the interest portions of these awards of $13,071.10, with judgment to be entered at the conclusion of proceedings in this Court. The Cleveland Indians are also entitled to interest on this amount from April 30, 1994, at the rate fixed by the Internal Revenue Code ("IRC") §§ 6621 and 6622. IRC § 6611(b)(2). The Cleveland Indians are not entitled to any refund from FUTA taxes as to Count 1 of the Complaint, because the damages amount for each player was in excess of the FUTA wage base.

17. Count II of the Complaint has been dismissed by stipulation, with prejudice.

18. Count III of the Complaint remains for determination by the Court upon these stipulated facts. If the Court determines that these awards should be treated as attributable for FICA tax and FUTA tax purposes to the tax years 1986 and 1987, the Cleveland Indians should have judgment for $96,250.20 (FICA) and $952.00 (FUTA). (This amount is inclusive of the amount in Paragraph 16 above.) The Cleveland Indians also will be entitled to interest on these amounts from April 30, 1994 for FICA and January 31, 1995 for FUTA, at the rate fixed by IRC §§ 6621 and 6622. IRC § 6611(b)(2). But, if the Court determines that these awards should be treated as attributable for FICA tax and FUTA tax purposes to the tax year 1994, the

Government should have judgment dismissing Count III.

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STATUTORY PROVISIONS

1. 26 U.S.C. 3101 provides in relevant part:

(a) Old-age, survivors, and disability insurance.

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

In cases of wages received during:	**The rate shall be:**
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

(b) Hospital insurance.

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages received during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages received after December 31, 1985, the rate shall be 1.45 percent.

* * * * *

2. 26 U.S.C. 3111 provides in relevant part:

(a) Old-age, survivors, and disability insurance.— In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

In cases of wages paid during:	**The rate shall be:**
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

(b) Hospital insurance.—

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

* * * * *

3. 26 U.S.C. 3121 provides in relevant part:

(a) Wages.—

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) in the case of the taxes imposed by sections 3101(a) and 3111(a) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit

base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

* * * * *

(v) Treatment of certain deferred compensation and salary reduction arrangements.

(1) Certain employer contributions treated as wages.—

Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general.—

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

The preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b)).

(B) Taxed only once.—

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan.—

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (a)(5).

* * * * *

4. 26 U.S.C. 3301 (1994 & Supp. IV 1998) provides:

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2 percent in the case of calendar years 1988 through 2007; or

(2) 6.0 percent in the case of calendar year 2008 and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

5. 26 U.S.C. 3306 provides in relevant part:

* * * * *

(b) Wages.—

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year.

* * * * *

(r) Treatment of certain deferred compensation and salary reduction arrangements

(1) Certain employer contributions treated as wages.

Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

(B) Taxed only once

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan.

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).

* * * * *

6. 26 C.F.R. 31.3101-2 provides in relevant part:

* * * * *

(c) *Computation of employee tax.* The employee tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

Example. In 1972, employee A performed for employer X services which constituted employment (see § 31.3121(b)-2). In 1973 A receives from X $1,000 as remuneration for such services. The tax is payable at the 5.85 percent rate (4.85 percent plus 1.0 percent) in effect for the calendar year 1973 (the year in which the wages are received) and not at the 5.2 percent rate which was in effect for the calendar year 1972 (the year in which the services were performed).

7. 26 C.F.R. 31.3101-3 provides:

The employee tax attaches at the time that the wages are received by the employee. For provisions relating to the time of such receipt, see § 31.3121(a)-2.

8. 26 C.F.R. 31.3111-2 provides in relevant part:

* * * * *

(c) *Computation of employer tax.* The employer tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

9. 26 C.F.R. 31.3111-3 provides:

The employer tax attaches at the time that the wages are paid by the employer. For provisions relating to the time of such payment, see § 31.3121(a)-2.

10. 26 C.F.R. 31.3121(a)-2 provides in relevant part:

(a) In general, wages are received by an employee at the time that they are paid by the employer to the employee. Wages are paid by an employer at the time that they are actually or constructively paid unless under paragraph (c) of this section they are deemed to be subsequently paid. For provisions relating to the time when tips received by an employee are deemed paid to the employee, see § 31.3121(q)-1.

(b) Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be

credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3123-1.

* * * * *

11. 26 C.F.R. 31.3121(a)(1)-1(a)(2) provides:

The annual wage limitation applies only if the remuneration received during any 1 calendar year by an employee from the same employer for employment performed after 1936 exceeds the amount of such limitation. The limitation in such case relates to the amount of remuneration received during any 1 calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any 1 calendar year.

Example. Employee A, in 1967 receives $7,000 from employer B in part payment of $8,000 due him from employment performed in 1967. In 1968 A receives from employer B the balance of $1,000 due him for employment performed in 1967, and thereafter in 1968 also receives $7,000 for employment performed in 1968 for employer B. The first $6,600 of the $7,000 received during 1967 is subject to the taxes in 1967. The remaining $400 received in 1967 is not included as wages and is not subject to the taxes. The balance of $1,000 received in 1968 for employment during 1967 is subject to the taxes during 1968 as is also the first $6,800 of the

$7,000 thereafter received in 1968 ($1,000 plus $6,800 totaling $7,800, which is the annual wage limitation applicable to remuneration received in 1968 by an employee from any one employer). The remaining $200 received in 1968 is not included as wages and is not subject to the taxes.

* * * * *

12. 26 C.F.R. 31.3301-2 provides:

The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See § 31.3306(b)-1, relating to wages, and §§ 31.3306(c)-1 to 31.3306(c)-3, inclusive, relating to employment.)

13. 26 C.F.R. 31.3306(b)(1)-1 provides in relevant part:

(a) *In general.* (1) The term "wages" does not include that part of the remuneration paid within any calendar year by an employer to an employee which exceeds the first $3,000 of remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3306(b)-1 or §§ 31.3306(b)(2)-1 to 31.3306(b)(8)-1, inclusive), paid within such calendar year by such employer to such employee for employment performed for him at any time after 1938.

(2) The $3,000 limitation applies only if the remuneration paid during any one calendar year by an employer to the same employee for employment performed after 1938 exceeds $3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after

1938 and not to the amount of remuneration for employment performed in any one calendar year.

Example. Employer B, in 1955, pays employee A $2,500 on account of $3,000 due him for employment performed in 1955. In 1956 employer B pays employee A the balance of $500 due him for employment performed in the prior year (1955), and thereafter in 1956 also pays A $3,000 for employment performed in 1956. The $2,500 paid in 1955 is subject to tax in 1955. The balance of $500 paid in 1956 for employment during 1955 is subject to tax in 1956, as is also the first $2,500 paid of the $3,000 for employment during 1956 (this $500 for 1955 employment added to the first $2,500 paid for 1956 employment constitutes the maximum wages subject to the tax which could be paid in 1956 by B to A). The final $500 paid by B to A in 1956 is not included as wages and is not subject to the tax.

* * * * *